

and revoking it the next. I do believe it is important that we exhaust every possible alternative before resorting to the use of our armed forces, and to have the inspectors go back into Iraq is obviously desirable. We must have the inspectors, though, go into Iraq in a context where there are no holds barred.

In August, Senator SHELBY and I visited the Sudan. The Sudan is now interested in becoming friendly with the United States. Our former colleague, Senator Jack Danforth, has brokered the basic peace treaty which still has to be implemented in many respects. But as a part of the new Sudanese approach, the Government of Sudan has allowed U.S. intelligence personnel to go to Sudanese factories, munitions plants, and laboratories with no announcement or minimal announcement of just an hour, break locks, go in, and conduct inspections. That would be a good model for the inspection of Iraq. If, in fact, the Iraqis will allow unfettered, unlimited inspections, it is conceivable that would solve the problem with respect to the issue of weapons of mass destruction.

Certainly that ought to be pursued to the maximum extent possible. If, and/or when the Iraqis oust the U.N. inspectors or limit the U.N. inspectors, raising again the unmistakable inference that Saddam Hussein has something to hide, then I think there is more reason to resort to force as a last alternative and, in that context, a better chance to get other countries, perhaps countries even in the Arab world, to be supportive of the use of force against Iraq at the present time as they were in the gulf war in 1991.

Extensive consideration has to be given, in my judgment, to the impact on the Arab world. Egyptian President Mubarak has been emphatic in his concern as to what the impact will be there. So we ought to make every effort we can to enlist the aid of as many of the nations in the Arab world as possible.

If Saddam Hussein rebuffs the United Nations, again raising the unmistakable inference that he has something to hide, then I think the chances of getting additional allies there would be improved.

With respect to the situation with Israel, there is, again, grave concern that a war with Iraq will result in Scud missiles being directed toward Israel. Some 39 of those Scud missiles were directed toward Israel during the gulf war. Their missile defense system was not very good. Now we know that Israel has the Arrow system, but still all of Israel is not protected. The Arrow system has not been adequately tested.

In the gulf war in 1991, the Israeli Prime Minister Yitzhak Shamir honored the request of President Bush not to retaliate. It is a different situation at the present time with Israeli Prime Minister Sharon having announced if Israel is attacked, Israel will not sit back again.

When former National Security Adviser Brent Scowcroft published a very erudite op-ed piece in the Wall Street Journal in August, he raised the grave concern that with Israeli nuclear power, there could be an Armageddon in the Mideast. Former National Security Adviser Brent Scowcroft was advising caution; that we ought not proceed without exhausting every other alternative.

A similar position was taken by former Secretary of State James Baker in an op-ed piece, again in August, in the New York Times urging that inspections be pursued as a way of possibly avoiding a war.

#### DELEGATION OF CONGRESSIONAL AUTHORITY

Mr. SPECTER. Mr. President, one other issue is of concern to me, and that is the question of delegation of congressional authority to the President. The constitutional mandate—and I spoke to this subject last Thursday and will not repeat a good bit of what I said—but the doctrine of separation of powers precludes the Congress from delegating its core constitutional authority to the executive branch.

I had occasion to study that subject in some detail on the question of the delegation of congressional authority on base-closing commissions. There is a substantial body of authority on the limitations of the delegation of congressional authority.

In an extensive treatise by Professor Francis Wormuth, professor of political science at the University of Utah, and Professor Edwin Firmage, professor of law at the University of Utah, the historical doctrines were reviewed leading to a conclusion that the Congress may not delegate the authority to engage in war.

If we authorize the President to use whatever force is necessary, that contemplates future action. While no one is going to go to court to challenge the President's authority, that is of some concern, at least to this Senator.

I discount the argument of those who say that regime change of Saddam Hussein is motivated by the failure to finish the job in 1991 or Saddam's efforts to assassinate President Bush, the elder. While it is true that Vice President CHENEY and Secretary of State Powell were principal participants as Secretary of Defense and as Chairman of the Joint Chiefs of Staff on the decision not to march to Baghdad in 1991, their experience benefits the United States in this current situation.

I further discount the argument that President George W. Bush seeks to correct any mistakes of his father or that it is a personal matter, as some have argued, from his comment: The guy tried to kill my dad. I am not unaware of the psychologist's contentions that motives are frequently mixed and hard to sort out, but I do think our Nation is fortunate to have the leadership of President Bush, Vice President CHE-

NEY, and Secretary Powell at this perilous time.

I have been briefed by administration officials on a number of occasions, and I am looking forward to another briefing tomorrow by National Security Adviser Condoleezza Rice and CIA Director George Tenet.

There is substantial information about the weapons of mass destruction which Saddam Hussein has available, but I am interested in knowing with greater precision, to the extent that the administration can release it, the situation with regard to Saddam's efforts to develop nuclear weapons.

In evaluating the time when preemptive action may be used, Secretary of State Daniel Webster, in dealing with the so-called Caroline incident, in 1837, when British troops attacked and sank an American ship, then-Secretary of State Webster made a point that an intrusion into the territory of another State can be justified as an act of self-defense only in those:

Cases in which the necessity of that self-defense is instant, overwhelming and leaves no choice of means and no moment of deliberation.

It is very relevant, on an evaluation of meeting that goal, as to just where Iraq stands on the weapons of mass destruction. In previous briefings, I have sought the administration plan as to what will be done after Saddam Hussein is toppled, and I think that is an area where a great deal more thought needs to be given. The situation in Iraq would obviously be contentious, with disputes between the Sunnis and the Shi'ites, with the interests of the Kurds in an independent state, and it means a very long-term commitment by the United States.

We know the problems we have in Afghanistan. Iraq has to defray some of the costs, but what happens after Saddam Hussein is toppled has yet to be answered in real detail.

On the issue of a battle plan, perhaps that is too much for the administration to tell the Congress, but as a Senator representing 12 million Pennsylvanians, in a country of 280 million Americans, I think we ought to have some idea as to how we are going to proceed and what the casualties may be.

All of this is to say there are many questions and many issues to be considered. The predictions are numerous that the Congress of the United States will pass a resolution authorizing the use of force by an overwhelming majority. I am not prepared to disagree with that. And on a proper showing of the imminence of problems with Saddam Hussein and on a proper showing that this is the last recourse, my vote may well be cast with the administration as well. But I am interested in hearing debate on the floor of the Senate as to the relative merits of requiring U.N. multilateral action as a condition for the use of force, contrasted with U.S. unilateral action.

If we require U.N. multilateral action, we do subject ourselves to the

veto of France, China, and Russia, which is undesirable. If we authorize the use of force unilaterally by the President, then we may well be setting a precedent which could come back to haunt us with nations such as China going after Taiwan or a nation such as India or Pakistan going after the other.

I look forward to the additional briefing tomorrow, and I look forward to the debate which we will be having on the Senate floor on these very important issues.

I note that the distinguished President pro tempore has come to the floor. While this is not prearranged and I have not given him any warning—although I do not think Senator BYRD needs any warning on constitutional issues—I would be interested in the views of the Senator from West Virginia, if he cares to give them, on this issue of delegation of authority.

Earlier in my presentation, as I said last Thursday, I talked about this issue and referred to the treatise by Professors Wormuth and Firmage of the University of Utah where in a chapter devoted to the delegation of the war power the professors say:

That Congress may not transfer to the executive . . . functions for which Congress itself has been made responsible. Of course, the power to declare war is a core congressional responsibility.

Chief Justice Marshall said—and I am leaving out some of the irrelevant parts—it will not be contended Congress can delegate powers which are exclusively legislative. And Hamilton argued in the *Federalist* to the effect that it is impossible for Congress to enact governing standards for launching future wars and, thus, spoke about the impermissibility of delegating the power to declare war.

The treatise notes the prohibition against the delegation of such power:

To initiate a war in a future international environment in which significant details, perhaps even major outlines, change from month to month or even from day to day. The posture of international affairs of the future cannot be known to Congress at the time the resolution is passed.

According to Henry Clay, a great Senator, the Constitution requires that Congress itself appraise the immediate circumstances before the Nation voluntarily enters into a state of war.

Clay's argument went beyond that. He argued that:

Congress itself cannot make a declaration of a future war dependent upon the occurrence of stipulated facts, because war is an enterprise in which all the contemporary circumstances must be weighed.

If we adopt the resolution, we will be saying that the President has the authority to use force, and that will be a decision which the President will make in futuro—some time in the future.

I am interested in the views of my distinguished colleague from West Virginia as to whether that is an unconstitutional or constitutional delegation of Congress' authority to declare war.

The PRESIDING OFFICER (Mrs. LINCOLN). The Senator from West Virginia.

Mr. BYRD. The distinguished Senator from Pennsylvania does me great honor in making his inquiry. I am not prepared to respond at the moment. I would be interested in reading the treatise by the persons named.

I might suggest that the Supreme Court, in its recent decision with reference to the line-item veto, strongly indicated that Congress cannot cede its powers under the Constitution.

I believe the court in that instance was alluding to certain powers over the purse.

This is a good question the distinguished Senator has posed. Based on his wide and rich experience as a prosecuting attorney, I think such questions as he raised are worthy of our attention. I would certainly want to be better prepared than I am at this moment to attempt to deal with the particular question he has asked. I thank him for his statement. I have been listening to his statement from my office. He raises serious questions which ought to be answered, ought to be debated.

I think we are hurrying too fast into this situation. I, as the Senator from Pennsylvania, have heard all of these predictions as to how fast the Senate and House will act. It may be that the train has gathered such momentum it will not be possible to slow it down, but I hope and pray this decision can be put off until after the election. I think it is too grave a decision. I think our fighting men and women need to be shown much greater regard than this, that we would not rush into having a vote on this resolution before it is adequately debated and amended.

I view with great concern the judgment that history will make of us for rushing into this decision, as we seem to be doing. I am concerned that Members of both Houses will have their decision tainted by the fact that it is going to be rendered in an atmosphere that is supercharged with politics. I have always had a great deal of confidence in the Senator from Pennsylvania, Mr. SPECTER. He is not one to be rushed or stampeded into making a decision. He always asks questions. He has the courage, the conviction, to stand up and state his principles and ask questions. That is what I hear him doing now. I am sorry I cannot respond to the questions the Senator posed, but I am glad to have this opportunity to make the comment about the Senator from Pennsylvania and what he is doing today, the questions he is asking.

Mr. SPECTER. Madam President, I thank my distinguished colleague from West Virginia for his response. I have raised quite a number of questions in the presentation I have made today. I am prepared to honor the President's request that we vote on this matter before we adjourn, but I think we ought to take the time to debate that need. There are a great many questions to be answered.

I look forward to having more of our colleagues on the floor. We were sched-

uled to go to this resolution at 1 p.m. today, and it is now 1:23. These issues about where the inspections are going to lead are important. These questions about the ramifications of acting alone are important. We do not want to repeat the mistakes of not going after bin Laden, as we had good cause to prior to 9/11.

We accused the generals of always fighting the last war. We have learned a bitter lesson from September 11, and we had cause to act in advance. We have to ask all this.

There is another issue I mention briefly before concluding, and that is the difference in language between the 1991 resolution, which says the President is authorized to use the Armed Forces in order to achieve the implementation of Security Council resolutions, and contrast it with the language of the two resolutions which are now pending, the resolution introduced by Senator LIEBERMAN and another resolution introduced by Senators DASCHLE and LOTT which say the President is authorized to use all means he determines to be appropriate.

"All means that the President deems to be appropriate" is a subjective standard, which is different from the authority which the Congress gave President Bush in 1991, saying the President is authorized to use the U.S. Armed Forces in order to achieve implementation of Security Council resolutions, which we call in the law "objective standard" as opposed to subjective standard.

When we have other Senators on the floor, I will look for an opportunity to discuss this and to have a clarification as to what is meant here.

I thank the Chair. I thank my colleague from West Virginia.

EXHIBIT 1

S. CON. RES. 78

Whereas the International Military Tribunal at Nuremberg was convened to try individuals for crimes against international law committed during World War II;

Whereas the Nuremberg tribunal provision which held that "crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced" is as valid today as it was in 1946;

Whereas, on August 2, 1990, and without provocation, Iraq initiated a war of aggression against the sovereign state of Kuwait;

Whereas the Charter of the United Nations imposes on its members the obligations to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state";

Whereas the leaders of the Government of Iraq, a country which is a member of the United Nations, did violate this provision of the United Nations Charter;

Whereas the Geneva Convention Relative to the Protection of Civilian Persons in Times of War (the Fourth Geneva Convention) imposes certain obligations upon a belligerent State, occupying another country by force of arms, in order to protect the civilian population of the occupied territory from some of the ravages of the conflict;

Whereas both Iraq and Kuwait are parties to the Fourth Geneva Convention;

Whereas the public testimony of witnesses and victims has indicated that Iraqi officials violated Article 27 of the Fourth Geneva Convention by their inhumane treatment and acts of violence against the Kuwaiti civilian population;

Whereas the public testimony of witnesses and victims has indicated that Iraqi officials violated Articles 31 and 32 of the Fourth Geneva Convention by subjecting Kuwaiti civilians to physical coercion, suffering and extermination in order to obtain information;

Whereas in violation of the Fourth Geneva Convention, from January 18, 1991, to February 25, 1991, Iraq did fire 39 missiles on Israel in 18 separate attacks with the intent of making it a party to war and with the intent of killing or injuring innocent civilians, killing 2 persons directly, killing 12 people indirectly (through heart attacks, improper use of gas masks, choking), and injuring more than 200 persons;

Whereas Article 146 of the Fourth Geneva Convention states that persons committing "grave breaches" are to be apprehended and subjected to trial;

Whereas, on several occasions, the United Nations Security Council has found Iraq's treatment of Kuwaiti civilians to be in violation of international law;

Whereas, in Resolution 665, adopted on August 25, 1990, the United Nations Security Council deplored "the loss of innocent life stemming from the Iraq invasion of Kuwait";

Whereas, in Resolution 670, adopted by the United Nations Security Council on September 25, 1990, it condemned further "the treatment by Iraqi forces on Kuwait nationals and reaffirmed that the Fourth Geneva Convention applied to Kuwait";

Whereas, in Resolution 674, the United Nations Security Council demanded that Iraq cease mistreating and oppressing Kuwaiti nationals in violation of the Convention and reminded Iraq that it would be liable for any damage or injury suffered by Kuwaiti nationals due to Iraq's invasion and illegal occupation;

Whereas Iraq is a party to the Prisoners of War Convention and there is evidence and testimony that during the Persian Gulf War, Iraq violated articles of the Convention by its physical and psychological abuse of military and civilian POW's including members of the international press;

Whereas Iraq has committed deliberate and calculated crimes of environmental terrorism, inflicting grave risk to the health and well-being of innocent civilians in the region by its willful ignition of 732 Kuwaiti oil wells in January and February, 1991;

Whereas President Clinton found "compelling evidence" that the Iraqi Intelligence Service directed and pursued an operation to assassinate former President George Bush in April 1993 when he visited Kuwait;

Whereas Saddam Hussein and other Iraqi officials have systematically attempted to destroy the Kurdish population in Iraq through the use of chemical weapons against civilian Kurds, campaigns in 1987-88 which resulted in the disappearance of more than 182,000 persons and the destruction of more than 4,000 villages, the placement of more than 10 million landmines in Iraqi Kurdistan, and ethnic cleansing in the city of Kirkuk;

Whereas the Republic of Iraq is a signatory to international agreements including the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, and the POW Convention, and is obligated to comply with these international agreements;

Whereas section 8 of Resolution 687 of the United Nations Security Council, adopted on April 3, 1991, requires Iraq to "uncondition-

ally accept the destruction, removal, or rendering harmless, under international supervision of all chemical and biological weapons and all stocks of agents and all related subsystems and components and all research, development, support, and manufacturing facilities";

Whereas Saddam Hussein and the Republic of Iraq have persistently and flagrantly violated the terms of Resolution 687 with respect to elimination of weapons of mass destruction and inspections by international supervisors;

Whereas there is good reason to believe that Iraq continues to have stockpiles of chemical and biological munitions, missiles capable of transporting such agents, and the capacity to produce such weapons of mass destruction, putting the international community at risk;

Whereas, on February 22, 1993, the United Nations Security Council adopted Resolution 808 establishing an international tribunal to try individuals accused of violations of international law in the former Yugoslavia;

Whereas, on November 8, 1994, the United Nations Security Council adopted Resolution 955 establishing an international tribunal to try individuals accused of the commission of violations of international law in Rwanda;

Whereas more than 70 individuals have faced indictments handed down by the International Criminal Tribunal for the former Yugoslavia in the Hague for war crimes and crimes against humanity in the former Yugoslavia, leading in the first trial to the sentencing of a Serb jailer to 20 years in prison;

Whereas the International Criminal Tribunal for Rwanda has indicted 31 individuals, with three trials occurring at present and 27 individuals in custody;

Whereas the United States has to date spent more than \$24 million for the International Criminal Tribunal for the Former Yugoslavia and more than \$20 million for the International Criminal Tribunal for Rwanda;

Whereas officials such as former President George Bush, Vice President Al Gore, General Norman Schwarzkopf and others have labeled Saddam Hussein a war criminal and called for his indictment; and

Whereas a failure to try and punish leaders and other persons for crimes against international law establishes a dangerous precedent and negatively impacts the value of deterrence to future illegal acts: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring), That the President should—*

(1) call for the creation of a commission under the auspices of the United Nations to establish an international record of the criminal culpability of Saddam Hussein and other Iraqi officials;

(2) call for the United Nations to form an international criminal tribunal for the purpose of indicting, prosecuting, and imprisoning Saddam Hussein and other Iraqi officials who are responsible for crimes against humanity, genocide, and other violations of international law; and

(3) upon the creation of such an international criminal tribunal seek the reprogramming of necessary funds to support the efforts of the tribunal, including the gathering of evidence necessary to indict, prosecute and imprison Saddam Hussein and other Iraqi officials.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. What is the parliamentary situation?

The PRESIDING OFFICER. The majority has 2 minutes 41 seconds remaining in morning business, and the minority has 7 minutes remaining.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. If there is no further business, morning business is closed.

## AUTHORIZATION OF THE USE OF UNITED STATES ARMED FORCES AGAINST IRAQ

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S.J. Res. 45, which the clerk will report.

The bill clerk read as follows:

A resolution (S.J. Res. 45) to authorize the United States Armed Forces against Iraq.

The PRESIDING OFFICER. Under the previous order, the time until 4 p.m. shall be equally divided and controlled between the two leaders or their designees with Senators permitted to speak therein for up to 15 minutes each.

Mr. BYRD. I ask unanimous consent I may have an additional 5 minutes over the 15.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BYRD. Mr. President, tonight at 8:00 p.m., President Bush will make a televised address to speak to the Nation about the threat of Iraq. According to press reports from this weekend, the President is expected to lay out, in detail, his case against Saddam Hussein, including the repressive dictator's long history of violence and aggression.

There is no disagreement about the character of Saddam Hussein, neither on Capitol Hill nor in the minds of every American. But while the President continues to make his case against Saddam Hussein, the issue on the minds of Senators and our constituents is, what exactly is the United States planning to do?

Rather than hearing more about Saddam Hussein—we know enough about him—what we need to hear from the President are answers to our questions about what he plans to do in Iraq. We need to know why the President is demanding that we act now. We need to have some idea of what we are getting ourselves into, what the costs and consequences may be, and what the President is planning to do after the fighting has stopped. After Iraq. After Saddam Hussein. It is not unpatriotic to ask these questions, especially when they are already on the minds of all Americans.

Why now? Those two little words: Why now?

Why now? What has changed in the last year, 6 months, or 2 weeks that would compel us to attack now?

Is Iraq on the verge of attacking the United States? If so, should our homeland security alert be elevated? Shouldn't the President be spending more time with his military advisors in Washington, instead of making campaign speeches all over the country?

The media reports suggest that the administration does not plan to act